

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

BKY 04-31313 DDO

Maggie M. Harper Copeland,

Chapter 13

Debtor.

**NOTICE OF HEARING AND MOTION OBJECTING TO
CONFIRMATION OF CHAPTER 13 PLAN AND FOR DIMISSAL OF CASE**

TO: All parties entitled to notice under Local rule 9013-3:

1. Jasmine Z. Keller, Chapter 13 Trustee, moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 10:30 a.m. on **September 9, 2004**, in U.S. Bankruptcy Court, Courtroom 228A, Second Floor, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than September 8, 2004, which is 24 hours (1 business day) before the time set for the hearing, or filed and served by mail not later than September 6, 2004, which is three (3) business days before the time set for the hearing. **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The Court has jurisdiction pursuant to 28 U.S.C. §157 and §1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. This motion arises under 11 U.S.C. §1307 and Bankruptcy Rule 1017. The petition commencing this Chapter 13 case was filed on March 5, 2004. The case is now pending in this Court.

5. If testimony is necessary as to any facts relevant to this motion, an employee of the Chapter 13 Trustee, 310 Plymouth Building, Minneapolis, Minnesota, will testify on behalf of the movant.

6. The Plan calls for the Debtor to make payments to the Trustee of \$1,000.00 for 54 months, for a total of \$54,000.00 ("the Plan Funds").

7. The Plan calls for the Plan Funds, net of the Trustee's estimated fee at 6.0% in the amount of \$3,056.60, to be disbursed as follows:

Homecomings Financial:	\$ 17,599.00
AmeriCredit	25,884.00
The Loan Store	5,610.00
Non-priority unsecured creditors	<u>1,850.40</u>
TOTAL	\$ 54,000.00

8. At filing, the Debtor estimated the total amount of her nonpriority unsecured debts to be \$38,899.00. Base upon estimated claims, the dividend to unsecured creditors is no more than 4%.

9. Homecomings Financial filed Proof of Claim No. 5 in the amount of \$144,671.34, of which \$19,765.07 is claimed as arrearages. The Minnesota Department of Revenue ("MDR") filed Proof of Claim No. 7 in the total amount of \$26,294.50, all of which is claimed as an unsecured claim with priority. No objection has been filed to these claims to date; therefore, the claims are deemed allowed under 11 U.S.C. § 502(a).

10. The Plan does not meet the requirement of 11 U.S.C. § 1322(a)(2) in that it fails to provide for the full payment of all priority and secured claims in full. Therefore, confirmation must be denied under 11 U.S.C. § 1322(a)(1) and 1325 (a)(6).

11. Movant requests that this case be dismissed because certain claims have been filed in an amount that exceeds the amount estimated by the Debtor in the Plan to such an extent that the Plan is now underfunded.

12. If testimony is required, the Trustee reserves the right to call a member of her staff and/or the Debtor to testify as to the merits of the pending Motion.

WHEREFORE, the Movant requests entry of an order denying confirmation of the Plan and dismissing this case, or converting this case to a case under Chapter 7, and for such other relief as the Court deems just and proper.

Jasmine Z. Keller, Chapter 13 Trustee

Dated: August 16, 2004

/e/ Margaret H. Culp
 Thomas E. Johnson, #52000
 Margaret H. Culp, #180609
 Chapter 13 General Counsel
 310 Plymouth Building
 Minneapolis, MN 55402
 (612) 338-7591

VERIFICATION

I, Margaret H. Culp, for Movant, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Dated: August 16, 2004

/e/ Margaret H. Culp
Margaret H. Culp

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

BKY 04-31313 DDO

Maggie M. Harper Copeland,

Chapter 13

Debtor.

**MEMORANDUM IN SUPPORT OF OBJECTION TO CONFIRMATION AND
MOTION TO DISMISS CASE**

FACTS

The Trustee relies upon the facts set forth in her verified motion, which for the sake of brevity, will not be repeated here.

LEGAL DISCUSSION

One of the fundamental requirements for confirmation of a Chapter 13 plan is that a plan shall “provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary of the execution of the plan.” *11 U.S.C. § 1322(a)(1)*. Essentially, the debtor must propose a plan that is fully funded, in the sense that the debtor commits to making sufficient payments to pay all the amounts required to be paid to creditors under the proposed plan.

Here, the Debtor has only committed a total of \$54,000.00 to the Trustee, yet the allowed priority claims exceed the total, based upon the filed, and deemed allowed claims of Homecomings Financial and the MDR. *11 U.S.C. § 502 (a)*. The plan is underfunded, and therefore cannot be confirmed.

CONCLUSION

The Debtor’s Plan is not confirmable because she does not proposed sufficient payment to fully fund it. Confirmation should be denied and the case dismissed.

Respectfully submitted:

Dated: August 16, 2004

/e/ Margaret H. Culp
Thomas E. Johnson, #52000
Margaret H. Culp, #180609
Chapter 13 General Counsel
10 Plymouth Building
Minneapolis, MN 55402
(612) 338-7591

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Maggie M. Harper Copeland,

Debtor.

BKY 04-31313 DDO

Chapter 13

UNSWORN DECLARATION FOR PROOF OF SERVICE

I, Lora Meier, employed by Jasmine Z. Keller, Chapter 13 Trustee, declare that on August 16, 2004, I served Notice of Hearing and Motion Objecting to Confirmation of Chapter 13 Plan and for Dismissal of Case; Memorandum in Support of Objection; and proposed Order Denying Confirmation and Dismissing Case on the individual(s) listed below, in the manner described:

By e-mail:

United States Trustee
1015 United States Courthouse
300 South 4th Street
Minneapolis, MN 55415

By first class U.S. mail, postage prepaid:

Maggie M. Harper Copeland
909 Marshall Avenue
St. Paul, MN 55104

Randall Smith, Esq.
UAW-Ford Legal Services
2233 University Avenue, Suite 235
St. Paul, MN 55114

AmeriCredit Financial Services
4000 Embarcadero Drive, Suite 200
Arlington, TX 76014

David L. Zoss
Special Assistant United States Atty.
380 Jackson Street, Suite 650
St. Paul, MN 55101

And I declare, under penalty of perjury, that the foregoing is true and correct.

Executed: August 16, 2004

/e/ Lora Meier
Lora Meier

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re: _____

Maggie M. Harper Copeland,

Debtor.

BKY 04-31313 DDO

Chapter 13

ORDER DENYING CONFIRMATION AND DISMISSING CASE

At St. Paul, Minnesota _____, 2004

The above-entitled matter came on for hearing before the undersigned United States Bankruptcy Judge on Chapter 13 Trustee's Motion for denial of confirmation and for dismissal or conversion of the Chapter 13 case.

Appearances were as noted in the minutes.

Upon the foregoing motion, the arguments of counsel, and all of the files, records and proceedings herein:

IT IS ORDERED:

1. Confirmation of the Debtors' Plan is **DENIED**.
2. The Chapter 13 case is **DISMISSED**.

The Honorable Dennis D. O'Brien
United States Bankruptcy Judge